

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-40026-FDS
)	
BRIAN VALLEE)	

MOTION FOR REVIEW BY DISTRICT COURT JUDGE
OF ORDER DENYING MOTION FOR PRODUCTION OF
NOTES OF DEFENDANT'S STATEMENTS

Defendant, Brian Vallee, hereby moves, under Rule 2(b) of the Rules for United States Magistrates in the United States District Court for the District of Massachusetts, that the district court review the Magistrate-Judge's denial of his Motion for Production of Notes and order the government to produce the notes of defendant's statements.

Defendant sought, by motion attached hereto as Exhibit 1 and incorporated herein by reference, production of notes of statements he allegedly made to law enforcement officers. The discovery was sought under Fed. R. Crim. P. 16(a)(1)(B)(ii), which requires disclosure of "the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent[.]"

After reviewing the notes in camera, the Magistrate-Judge denied the motion, by order dated May 5 and attached hereto as Exhibit 2 ("Order"). As a basis for his ruling, the Magistrate-Judge stated that the notes did not meet the requirements of Rule 16, in that "they are not verbatim accounts of the agents' interview with Mr. Valle." Id. at 3. But Rule 16 does not require that the notes or record produced be verbatim or, even as in the Jencks Act, even "substantially verbatim." Instead, the Advisory Committee notes assert:

The written record need not be a transcription or summary of the defendant's statement but must only be some written reference which would provide some means for the prosecution and defense to identify the statement.

As a second basis for his ruling, the Magistrate-Judge states that the reports provided "accurately reflect the substance of those notes." Order at 3-4. Nothing in either the plain language of the Rule or the Advisory Committee Notes indicates that notes are subject to disclosure only if they cast doubt on the accuracy of the reports or are inconsistent or exculpatory. As Judge Collings held in United States v. Almohandis, 307 F.Supp.2d 253 (D.Mass. 2004), "The Rule requires production of 'any written record of the substance of any relevant oral statement . . . '. The notes are 'a' written record. They may not be the only written record, but they certainly are 'a' written record." Id. at 255.

For the reasons set forth above and set forth in defendant's Motion for Production of Notes of Defendant's Statements, defendant respectfully moves that this Court order the production of the notes of defendant's statements.

BRIAN VALLE
By his attorney,

/s/ J.Martin Richey

J. Martin Richey
B.B.O. # 559902
Federal Defender Office
408 Atlantic Ave. 3rd Floor
Boston, MA 02110
Tel: 617-223-8061

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